

June 29, 2017

via electronic filing

Marlene H. Dortch
Secretary, Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

**Re: Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard • GN Docket No. 16-142
Accessibility of User Interfaces, and Video Programming Guides and Menus
MB Docket No. 12-108**

Dear Ms. Dortch,

On Tuesday, June 27, Christian Vogler of the Technology Access Program at Gallaudet University (TAP) and I spoke with Nancy Murphy, Martha Heller, Steven Broeckaert, Brendan Murray, Diana Sokolow, Evan Baranoff, Kathy Berthot, and Kim Matthews of the Media Bureau, Karen Peltz Strauss of the Consumer and Governmental Affairs Bureau, and Suzy Rosen Singleton, Will Schell, and Sarah Burgart of the Disability Rights Office. regarding the above-referenced matters.

We reiterated the positions of TAP and the deaf and hard of hearing Consumer Groups in our comments in Docket No. 16-142, including the Consumer Groups’ and TAP’s general support of the proceeding to authorize the transition.¹ We noted the importance of applying the Part 79 rules to both broadcasters originating and multichannel video programming distributors (MVPDs) passing through ATSC 3.0 streams to ensure that deaf and hard of hearing viewers are able to continue accessing broadcast programming on equal terms, consistent with Congressional intent and long-standing Commission precedent.² More specifically, we emphasized the importance of the Commission continuing to apply Rule 79.1 to broadcasters originating and MVPDs passing through ATSC 3.0 streams.³

¹ Comments of Telecommunications of the Deaf and Hard of Hearing, Inc. (TDI), et al. at 1 (May 9, 2017) (“Consumer Groups and TAP Comments”), <https://www.fcc.gov/ecfs/filing/10509315914947>.

² *Id.* at 1-3.

³ See 47 C.F.R. § 79.1. We clarified with the National Association of Broadcasters (NAB) that the reference to Rule 79.4 in the NAB petition that initiated this proceeding narrowly alluded to Rule 79.4(c)(1)(i)’s safe harbor for the Society of Motion Picture and Television Engineers Timed Text (SMPTE-TT) format, upon which the ATSC 3.0 captioning standard is based, to make the argument that the Commission has approved of technologies closely related to the ATSC 3.0 standard for closed captions in the past. See Joint Petition for Rulemaking of

We also emphasized the importance of requiring simulcasts of ATSC 1.0 and 3.0 streams in any initial authorization for broadcasters to begin using ATSC 3.0 streams to ensure that MVPDs are able to adapt their workflows to accommodate the fundamentally new architecture of ATSC 3.0 streams, including the new format for captions contemplated by the ATSC 3.0 standard.⁴ We noted that the Commission should commit to conducting an additional proceeding to resolve any outstanding issues with accessibility and other features before broadcasters are allowed to switch exclusively to ATSC 3.0 streams, particularly to address new technologies, such as image overlays, that the ATSC 3.0 captioning standard might facilitate, and to consider phasing out old technologies, such as CEA-608 captions.⁵ We reiterated that any new accessibility features facilitated by ATSC 3.0 transmissions must not come at extra cost to consumers who are deaf or hard of hearing.⁶

Finally, we noted our disappointment that the Commission has not yet pressed ahead on requiring improved accessibility for menus to customize the font, size, color, and other

National Association of Broadcasters, et al. (April 13, 2016), <https://ecfsapi.fcc.gov/file/60001707343.pdf>. We noted in the conversation with Commission staff that the Commission's Notice of Proposed Rulemaking in Docket No. 16-142 "propose[d] to apply all of [the Commission's] broadcast rules to Next Gen TV stations," including the broadcast rules in 47 C.F.R. Part 79. *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Notice of Proposed Rulemaking, GN Docket No. 16-142, 32 FCC Rcd. 1670, 1699, ¶ 68 & n. 156 (Feb. 24, 2017), https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-13A1_Rcd.pdf. The Commission has made clear that the "broadcast rules" for closed captions are those in Rule 79.1, and not Rule 79.4. *See, e.g.*, Closed Captioning of Internet Protocol-Delivered Video Programming, Report and Order, MB Docket No. 11-154, 27 FCC Rcd. 787, 795-96, ¶ 11 (Jan. 13, 2012), https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-9A1_Rcd.pdf. Commission rule and precedent and the notice requirements of the Administrative Procedures Act require that the Commission apply the requirements of Rule 79.1, as well as the corresponding requirements for emergency information and video description in Rules 79.2 and 79.3 and the relevant apparatus requirements in Subpart B of Part 79, to ATSC 3.0 transmissions and associated pass-through and rendering of captions. We do not, however, opine on whether the ATSC 3.0 caption standard would be consistent with Rule 79.1 or whether that standard's potential consistency with Rule 79.4(c)(1)(i)'s safe harbor should bear on the standard's consistency with Rule 79.1—issues which the Commission should address in fuller depth in a future rulemaking prior to allowing stations to transition exclusively to ATSC 3.0 transmissions.

⁴ Consumer Groups and TAP Comments at 2-4.

⁵ *Id.*

⁶ *Id.* at 4.

features of captions on set-top boxes, televisions, and other apparatus.⁷ Access to these features is critical to ensure access for people who are DeafBlind or who are deaf and have vision impairments. While we will investigate the possibility of the transition to the ATSC 3.0 standard as a context in which set-top box, television, and other manufacturers can improve the accessibility of these menus, it remains incumbent on the Commission to adopt rules that ensure that consumers can actually access captions, consistent with the requirements of the Television Decoder Circuitry Act, the Telecommunications Act of 1996, and the Twenty-First Century Communications and Video Accessibility Act (CVAA).

Please don't hesitate to contact me if you have any questions.

Respectfully submitted,

/s/

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CC:

Meeting attendees

Patrick McFadden, NAB

Diane Burstein, NCTA

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⁷ See generally Accessibility of User Interfaces, and Video Programming Guides and Menus, Second Report and Order and Second Further Notice of Proposed Rulemaking, MB Docket No. 12-108, 30 FCC Rcd. 13,914, 13,932-35 ¶¶ 33-40 (Nov. 20, 2015), https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-156A1_Rcd.pdf.